

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 247

JAMES A. TILLMAN, PETITIONER

v.

IRWIN STEINGUT AND HAROLD E. BLODGETT, AS
RECEIVERS OF THE ASSETS IN NEW YORK OF
RUSSO-ASIATIC BANK; GUARANTY TRUST COM-
PANY OF NEW YORK; JESSE C. MILLARD; AND
UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT*

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Steingut and Blodgett, as receivers of the assets in New York of Russo-Asiatic Bank, have filed a petition for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit, No. 245, this Term, seeking to review the judgment of that court which rejected their claim to the deposits formerly standing on the books of the Guaranty Trust Company in the name of the Russo-Asiatic Bank. Petitioner Till-

man is an alleged creditor of the Russo-Asiatic Bank who intervened in the receivers' action and sought a judgment against Guaranty, but whose claim was likewise denied by the courts below; he seeks review here of that portion of the judgment below which denied him recovery. Neither Tillman nor the receivers were parties to the two companion actions by the United States against Guaranty Trust Company to recover the former Russo-Asiatic accounts, in which Guaranty now seeks review of the judgments below upholding the United States' claims, Nos. 239 and 240, this Term, and in which the United States is filing a conditional cross-petition (Nos. 313-314) concerning the allowance of interest.¹ Since the courts below denied the motions of the United States in the receivers' action for substitution and consolidation,² the United States did not litigate Tillman's right to relief in the lower courts. In our view, however, his claim is totally lacking in merit and was correctly denied by the courts below.

1. The relevant facts are these. Petitioner Tillman is an alleged creditor of Russo-Asiatic Bank, whose own claim arose out of dealings

¹ There was, however, a consolidated trial of the receivers' action and those brought by the United States. A full statement of the facts is contained in the United States' Brief in Opposition in Nos. 239 and 240, pp. 4-16.

² The United States is filing a conditional cross-petition (No. 315) in the receivers' action to review the denial below of its motions for substitution in or consolidation of its two separate actions against Guaranty with the receivers' action against Guaranty.

with Russo-Asiatic in Russia in 1918, and he is also assignee of claims assigned to him in 1927 by Russian nationals who likewise dealt with the Bank in Russia (R. 250-251, 3101).³ He obtained issuance of a warrant of attachment out of a New York state court, in 1927, in an action against Russo-Asiatic, and purported to levy upon that Bank's accounts with Guaranty Trust Company on August 24, 1927, in the sum of \$188,408 (R. 249-250, 3101, 3103).

After removal of Tillman's action to the United States District Court for the Eastern District of New York, an order was entered on June 26, 1928, with his consent, vacating the attachment (R. 251, 3103-3104). The cause proceeded to judgment against Tillman in the District Court, and on appeal, the Circuit Court of Appeals affirmed as to Tillman's own cause of action, and remanded the assigned claim to the state court. *Tillman v. Russo-Asiatic Bank*, 51 F. 2d 1023 (C. C. A. 2), certiorari denied, 285 U. S. 539. Upon remand, the attorneys appearing for the Russo-Asiatic Bank caused the entry in the state court, on April 28, 1933, of an order vacating the 1927 attachment, which order was affirmed by the state appellate courts (R. 139, 251, 3104). Thus, at the time of the Litvinov Assignment, on November 16, 1933, Tillman's attachment was not in effect.

³ The references are to the record in Nos. 239, 240, and 245, covering the litigation out of which the present claim arises.

In 1935, on Tillman's motion, the state court struck out as unauthorized the appearance of the attorneys who had appeared for Russo-Asiatic in 1933, *nunc pro tunc*, and vacated the order of April 28, 1933, which had vacated the purported attachment. The United States did not participate in these proceedings. Shortly thereafter, Tillman secured a default judgment against Russo-Asiatic for \$210,675.05, without appearance on behalf of the defendant (R. 251, 3104). An action brought in 1936 by Tillman, together with the sheriff as provided by New York practice (R. 3102-3103), to enforce the warrant of attachment purported to be levied in 1927 on Russo-Asiatic's accounts with Guaranty, was dismissed on the ground that it was barred by the statute of limitations applicable to suits to enforce attachments (*Tillman v. National City Bank and Guaranty Trust Co.*, 276 N. Y. 663; R. 252, 3103).

Tillman was permitted to intervene on March 9, 1936, in the suit commenced in 1919 by the emigré directors of Russo-Asiatic (R. 28-29, 251, 3101), and in December 1939 he filed a claim with the receivers founded upon the default judgment he had obtained in 1935 (R. 3101). Tillman did not seek to intervene in the actions by the United States against Guaranty (R. 3103).

2. On these undisputed facts, the courts below properly rejected Tillman's claim in its entirety. They held that his attachment could not be a "pre-

existing infirmity", subject to which the United States received the claim to the Russo-Asiatic accounts, because it was not in effect on November 16, 1933 (R. 3103). Moreover, *United States v. Pink*, 315 U. S. 203, determines that claims such as Tillman now seeks to enforce, arising from dealings with Russo-Asiatic in Russia, could not affect the rights of the United States in suits under the Litvinov Assignment, even where the claimant's purported attachment antedated November 10, 1933. See the United States' Brief in Opposition in Nos. 239 and 240, pp. 29-30, 32-33.

In sum, Tillman's claim is obviously without merit. It rests on a 1935 default judgment secured after the appearance of Russo-Asiatic's attorneys had been stricken as unauthorized. The purported attachment, which is sought to tie the claim to the present litigation, had been vacated before November 16, 1933, the date of the Litvinov Assignment, and suit to enforce the attachment, after its reinstatement in 1935, has already been held barred by the statute of limitations. Finally, the entire claim arises solely out of dealings with Russo-Asiatic in Russia.

It is respectfully submitted, therefore, that the present petition should not be granted whether or not the Court grants the petition of the receivers in No. 245, and the cross-petition of the United States in that action (No. 315). Even in the event that both those petitions are granted, adequate

grounds exist for denying the present petition, for Tillman's claim is plainly insubstantial and presents no significant question for review.

PHILIP B. PERLMAN,
Solicitor General.

SEPTEMBER 1947.

